Advisory Council on the Status of Women
Conseil consultatif sur la condition de la femme

Summary of the brief

Male Violence in Relationships and the Justice System

by the

New Brunswick Advisory Council on the Status of Women

December 1989

Moncton, N.B.

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> "What is ...significant is that we use the term "battered wives" rather than "violent husbands". It is rather as though the problem of international terrorists hijacking aeroplanes was described as "the problem of hostages"! The effect of this renaming of the problem is to shift attention from the instigators of the violence to its victims, and the shift tends to make it easy to blame the victim for the problem and to encourage a search for solutions among the victims rather than among the violent partners. This misnaming is probably no accident." (J. Pahl)

The New Brunswick Advisory Council on the Status of Women decided almost a year ago to evaluate the application of the law in cases of male violence in relationships. We studied available statistics on incidence, police response, charges laid and case disposition. We interviewed police, prosecutors, judges, victims and victim services representatives. We found only incomplete answers to our questions, which by itself, underscores the lack of priority given to these cases.

The New Brunswick government does not yet compile the statistics on the number of calls of violence against women partners received by police despite recommendations since 1979 by the Advisory Council.

The only statistics available from the government are the number of charges laid in cases of assault between partners. According to these statistics provided by the Department of Justice, there were, in 1988 in New Brunswick, 47 charges against men who had allegedly assaulted their partners. These figures are reliable according to their source, but the RCMP report that they laid 165 such charges in 1988 and the media report almost weekly on such cases before the courts.

Since the provincial government could not provide statistics on the number of calls received by police in New Brunswick, each

police force was asked to provide information. The RCMP reported they had received 423 "domestic dispute" calls in 1988. Approximately half of municipal police forces provided the requested information; they had answered 550 calls. A rough estimate of the number of calls received by all municipal police forces would be double that figure, 1,100 calls. Therefore, including RCMP figures, approximately 1,523 domestic dispute calls can be estimated to have been recorded in New Brunswick in 1988.

The available statistics reveal some inconsistencies. How else to explain that in Moncton, population 54,000, police received 32 calls in 1988, while in Edmundston, population 11,000, police answered 119 calls? Does Edmundston have 20 times the level of violence of Moncton?

No charges are laid in most cases of wife assault reported to police, even though it is even more important to lay charges in cases of wife assault than in other assault cases because men who have assaulted their wives tend to do it again and to increase the level of violence.

A report on a crisis intervention pilot project in the Acadian Peninsula showed that the RCMP, who have a clear response policy on wife assault cases, laid charges in half of the cases reported to them, while municipal police only laid charges half as often, in one out of four cases.

The sentences given to convicted wife assaulters seem low, especially given that cases that reach the courts are probably the most serious one. More than half of the offenders received either a fine of between $100. and $300. (in five cases) or a probation period (in 19 cases) only 10 of the 47 offenders were incarcerated, for periods varying from 10 days to three months.

According to a recent survey conducted for Statistics Canada by Decima Research Ltd., 24% of men in the Atlantic provinces admit having used physical violence against their partner. The number is twice the national rate of 12%. In other words, in New Brunwick, every year approximately 40,500 women are victims of assault by their partners, often repeatedly. We can conclude that only one of every 1,000 assaulters is brought to court on assault charges, even though, according to a study done in the Acadian Peninsula, only 26% of women victims do not want charges laid against their spouse.

Municipal police forces in New Brunswick, unlike the RCMP, do not have a uniform response policy on wife assault cases. Certain municipal police chiefs encourage their officers to lay charges whenever they have reason to believe that an assault occurred, while in some other municipalities, police let the victim decide whether she wants charges to be laid, except in cases where the victim was seriously injured. Many women who are asked this question interpret it as asking whether they want revenge. Their immediate concern is to be left in peace and to be respected.

One police chief said to the Advisory Council that the police should not be involved in this type of call, since their intervention will probably only provoke greater violence. Another police chief said these calls were only good for the garbage.

Individual police officers' response also differ greatly, depending on their attitude. Some said they try to reconcile the couple, others will put the suspect in prison until his trial, and some others blame the victim. One of the officers interviewed said he did not know it was up to the police to lay charges in those cases. According to this officer of the law:

> "Assaulted women like being beaten. Often, they deserve it. I tell them, 'you like it since you stay with him'. And I tell the guy to hit harder. If they go to court, these men have no chance. There is no justice. Feminists and Stalinists have influence on the judges."

Even though the Crown prosecutors' policy on such cases states that peace bonds should only be requested when the evidence does not warrant or is insufficient for a charge of assault. The most frequently requested procedure is the peace bond. Such a bond is a contract signed by the violent partner promising to keep the peace and to be of good behaviour for a period of up to 12 months; the peace bond does not give him a criminal record. The number of peace bonds issued each year to assaultive spouses is not known, since the justice system does not classify those separate from the incidents of disturbing the peace. In Moncton alone, at least two or three are issued each week. A report by the Solicitor General of Canada states that peace bonds are often violated with impunity.

One initial conclusion of this research is that some women have reason to hesitate before they call on the present judicial system because they may very well be victimized again by the system. Immediate action is called for.

This research also points to the need to know more about the way the justice system actually deals with assaults against women and to develop policies to ensure that these cases are dealt with fairly. The Department of Justice has this responsibility. The preventive value of the law is dependent upon the certainty of arrest and of appropriate penalty that criminals face. The law on impaired driving has shown to what extent enforcement of a law can be effective in preventing dangerous behaviour. The same could be done for wife assault.

A study in London, Ontario showed that when the municipal police force was instructed to lay criminal charges in all cases of violence in the family, the number of charges laid rose by 2500% and the cases were heard by the provincial instead of the family courts. Follow-up studies of some cases where charges had been laid were done; a decrease in the violence and in the number of withdrawn charges were reported.

Summary of recommendations

1. That the Solicitor General of New Brunswick issue a clear directive to all police forces in the province to lay assault charges in all cases where they have reason to believe that the assault did occur.

2. That all police forces be ordered to provide to government statistics on the number of wife assault calls they receive and on the number and type of charges laid, as well the reasons for decisions not to lay charges, if applicable.

3. That the Department of Justice develop information cards that police officers would give to actual or suspected victims and assaulters. The cards should state that wife assault is a crime and should list community resources.

4. That a uniform response policy to calls concerning wife assault be used by all New Brunswick police forces; it should specify that after ensuring the victim's safety, police officers must refer her to a helping agency which would support her while she deals with the justice system. When the officers have reason to believe that the assaulter may repeat the violence, they should arrest and detain him until the trial. If the assaulter requests help for his problem, the police should refer him to a counselling service for violent men, as well as lay charges.

5. That wife assault be dealt with like other assaults and that sentences imposed on wife assaulters reflect the seriousness of the assault; that the sentences for wife assaulters include, whenever possible, mandatory counselling; that failure to cooperate with this counselling be reported and that the justice system then take appropriate measures.

6. That victim-witness programs be established throughout the province and that they ensure that all women assaulted by their partners write a victim impact study and that judges take these into consideration.

7. That services for victims and offenders be offered equally throughout the province.

8. That all interveners in the justice system receive training sessions to increase awareness of what happens in relationships where there is violence against women, of the characteristics of violent men and assaulted partners and of the economic, psychological and cultural obstacles to the victim's testimony. The aims of these sessions would be to ensure that their interventions are respectful of these realities, that victims are not victimized by the system and that service is consistent and fair.

9. That the provincial government ensure that a coherent approach is adopted by medical and social interveners in cases of male violence in relationships; that it be based on sexual equality and on a condemnation of male dominance of women.

10. That funding of civil legal aid be increased so that assaulted women who live below the poverty line have access

to the courts to settle issues under the Divorce Act, the Marital Property Act and the Family Services Act; that legal aid fees paid to lawyers be increased to reflect more closely those charged to other clients.

11. That the provincial government ensure that counselling services for women and men have as an objective the equalization of power between women and men in relationships and in society.

12. That the Department of Justice carry out extensive research on the issue by compiling statistics on calls received by police and on the number and types of charges laid against assaulters, and by studying how such cases are dealt with in order to be aware of any tendency to minimize the seriousness of the crime.

13. That a media campaign be organized to increase public awareness that violence in relationships is a crime, condemning male domination of women in all social structures including the family, denouncing the model of a male head of the family and promoting the view of spouses as equals with interchangeable roles who settle conflicts by negotiation rather than by force.

14. That the provincial government take an active role in the fight against sexism and sexual discrimination and that equity programs be adopted to create equality between women and men.

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The New Brunswick Advisory Council on the Status of Women is an agency for consultation and study which was created to advise the provincial government and bring before the public issues relating to the status of women. The Council reports directly to the Premier of the province.

Ce document est disponible en français.

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"What is ...significant is that we use the term "battered wives" rather than "violent husbands". It is rather as though the problem of international terrorists hijacking aeroplanes was described as "the problem of hostages"! The effect of this renaming of the problem is to shift attention from the instigators of the violence to its victims, and the shift tends to make it easy to blame the victim for the problem and to encourage a search for solutions among the victims rather than among the violent partners. This misnaming is probably no accident." (J. Pahl)

1. Introduction

Wife assault is a crime in Canada, on the same basis as assaults between strangers. That affirms Canadian society's official condemnation of the violence suffered by women from their partners.

To what extent is that law applied in New Brunswick? To answer, we need to know how many battered women there are in New Brunswick, how many "family dispute" calls are received by police, what is the police response and under what circumstances police lay charges. What percentage of assaulters are brought to court? What are the obstacles to the application of the law? What charges are laid and what sentences are given? Are there more efficient measures that the justice system could adopt in dealing with assaults between partners?

That is what the New Brunswick Advisory Council on the Status of Women wanted to know in order to evaluate the application of the law. We only found incomplete answers to these questions. The quantitative and qualitative information we did receive was provided by the provincial government and by agencies and interveners in various regions of the province, at various levels of intervention. Wherever the information was incomplete, we based our analysis on research from other parts of Canada or from the United States.

We will present the results of our research by first giving a historical overview and a clear definition of the problem; we will then describe what we know about the New Brunswick situation; we will discuss problems raised when applying the law; and we will propose recommendations to improve the justice system's response to the problem.

2. Historical Notes

Secrecy has marked the issue of wife assault for centuries. Only over the last 10 years have we begun to speak out on this issue. Much has been written about it since then and five transition houses now offer emergency services to victims in New Brunswick. But it is not clear that there are fewer assaulters or fewer victims than 10 or 20 years ago. Progress is slow because the problem has deep historical roots and these influence many other areas of human activity. For example, until 1874, the law prescribed the "rule of thumb": it openly allowed a husband to "chastise" his wife with a whip or a stick as long as it was no bigger than his thumb.[1] Mental and physical cruelty was only accepted as grounds for divorce in Canada in 1968.

In 1979, the New Brunswick Advisory Council on the Status of Women, confronted with a large number of requests for help from battered women, recommended to the provincial government that it keep statistics on cases of wife assault reported to police.

In 1982, the Canadian Advisory Council on the Status of Women released a study that showed that one Canadian woman in 10 is beaten by her partner.

All provincial governments then issued directives to their police forces and in most cases to Crown prosecutors to treat such cases with severity and to lay charges in all cases where they have reason to believe an assault took place. Instructions given were that police did not have to have seen the assault in order to lay charges.[2]

Also in 1982, the New Brunswick Advisory Council on the Status

of Women recommended to the provincial government that mandatory reporting regulations be extended to include all cases of intra-family violence, including wife assault. The Advisory Council also recommended, in accordance with the federal position, that police should arrest the assaulter, as it does in cases of assault between strangers. The Council recommended that police be required to file a report on all wife assault calls they receive and not only on those where charges are laid.

In 1983, amendments to the Criminal Code improved the protection afforded women victims of assault by their partners: the Evidence Act was amended to include incidents of assault in the list of cases where a spouse could be compelled to testify against the other spouse.

The Advisory Council also recommended that the provincial Family Services Act be amended to replace the statement that the family is the basic unit of society with a clause stating that the individual is the basic unit of society and the individual's well-being is inseparable from the well-being of society.

Also in 1983, the provincial government established an interdepartmental committee on violence against women, coordinated by the Women's Directorate. One year later, this Working Group released its report which recommended measures that the various interveners should take to address the issue.

These recommendations and the report have since been forgotten.

In January 1988, the New Brunswick government established a new interdepartmental committee on "family violence", whose work is ongoing. The federal government is presently working on a national strategy against "family violence" and we await the release of its plan of action.

2.1 Defining the Problem

Current federal and provincial government strategies are aimed at "family violence", rather than violence against women. Without denying the seriousness of incidents of abuse of children and elderly persons, certain facts are undeniable: violence is far from distributed equally among men and women and violence goes beyond the family. In fact, 77% of all cases of "family violence" are women beaten by their spouse.[3] Moreover, many women are beaten by their ex-spouse or boyfriend. Teenage girls are sometimes assaulted by their boyfriends.

When violence against women is identified as a family problem, the impression is created that the responsibility is equally shared by the family members, that the problem is one of dysfunctional family relationships and that it is a matter of family arguments. It also buries the fact that usually such violence is an abuse of power by men over women.

In fact, if the goal is to reduce the incidence of violence against women, to prevent rather than to treat, the root of the problem, the domination of women by men, must be addressed.

Inequality between women and men is evident at all levels of social organization. Attacking the problem from such a global perspective is much more difficult than "fixing" individual cases through existing services. That is why society chooses to view male violence against women as learned behaviour of "sick" persons rather than as part of women's oppression in society.

The theory of learned behaviour states that violent behaviour is learned when the assaulter is abused as a child. It is

true that many criminals were ill-treated as children. However, it is also true that girls and boys do not react the same way to abuse. Abused boys will tend to use violence themselves while girls often will continue to be victims. Boys learn that it is acceptable to use physical aggression to maintain control of a situation but girls learn that it is not tolerated or appropriate for them.

The theory of learned behaviour prescribes an individual case approach as the preferred mode of intervention. Although individuals caught in such violence do need help, we believe governments must also recognize the social dimension of the problem. Prevention, as opposed to crisis intervention, requires measures that clearly demonstrate society's condemnation of male violence against women and that create equality between women and men in all areas of society.

National studies show that those in the justice system tend to subscribe to the individual view of the problem, to minimize the crime and to divert these cases away from the criminal court system. Excuses for the assaulter's behaviour are readily accepted: he was under stress, he was abused as a child, he was under the influence of alcohol, he was provoked by the victim or he is a good provider and not a danger to society. Why do we not apply this reasoning to all crimes? Do we accept such excuses when an assaulter attacks a stranger?

It is not sufficient to say that the assaulter is sick. The man who assaults his wife is demonstrating his power, his "superiority". He tends to have a very traditional view of male and female roles where men make the decisions and women are submissive and are solely responsible for the emotional climate of the family.[4] Research studies indicate that there is very little violence among couples who have a relationship

based on equality. They tend to resolve conflicts by negotiating solutions rather than by imposing them.

The New Brunswick Advisory Council on the Status of Women chooses to speak of violence against women rather than of family violence. We accept the definition of a battered woman adopted by the Canadian Advisory Council on the Status of Women:

> Wife battering is the loss of dignity, control, and safety as well as the feeling of powerlessness and entrapment experienced by women who are the direct victims of ongoing or repeated physical, psychological, economic, sexual and/or verbal violence or who are subjected to persistent threats or the witnessing of such violence against their children, other relatives, friends, pets and/or cherished possessions, by their boyfriends, husbands, live-in lovers, ex-husbands or ex-lovers, whether male or female. The term "wife battering" will also be understood to encompass the ramifications of the violence for the woman, her children, her friends and relatives, and for society as a whole.[5]

3. Assault

Section 265 of the Criminal Code defines assault, whether it involves strangers or spouses, as follows:

1) A person commits an assault when
a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

The section specifies that it applies to all assaults, including sexual assaults, sexual assault with a weapon, and threats to a third party. This Criminal Code definition is more restrictive than ours, but it does include sexual assaults and threats of violence, as well as beatings.

3.1 Assault Charges: Statistics

It is extremely difficult to obtain data on the application of the law in New Brunswick.

Despite recommendations since 1979 by the Advisory Council, the provincial government does not yet compile the statistics on the number of calls police receive reporting violence against women partners. Interveners say that the legal action most frequently used is the peace bond but there is no information on the number of peace bonds in cases of wife assault, since Department of Justice statistics do not distinguish between peace bonds resulting from assault between partners and others. The only statistics available from the government were the number of charges laid in cases of assault between partners.

According to these statistics provided in February 1989 by the Department of Justice, there were, in 1988 in New Brunswick, 47 charges against men who had allegedly assaulted their partners. These figures are "reliable" according to their source. We remain sceptic because the RCMP report that they laid 165 such charges. Also while the Department reports that no charges were laid in Moncton the local media reports almost weekly on such cases before the courts and local interveners in the justice system confirm that the official statistics cannot be correct. Since the Provincial Courts' statistical system does not distinguish between assaults between partners and

other assaults, an exact count is not possible. The situation remains unclear.

According to a recent survey conducted for Statistics Canada by Decima Research Ltd., 24% of men in the Atlantic provinces admit having used physical violence against their partner.[6] That number is twice the national rate of 12%. In other words, in New Brunswick, every year approximately 40,500 women are victims of assault by their partners, often repeatedly. We can conclude that only one of every 1,000 assaulters is brought to court on assault charges, even though, according to a study done in the Acadian Peninsula, only 26% of women victims do not want charges laid against their spouse.

Beatings suffered by partners are in general more severe than those resulting from assaults between strangers. While 48% of victims of non-family assaults suffered wounds, 65% of women assaulted by their partner (and 83% of those women victims of multiple assaults) were wounded. Victims of non-family assaults needed medical care in one case out of seven while in family-related assaults, one in four victims needed medical attention and in cases of multiple assaults, one in three.[7]

Where violence resulted in a homicide, police had been called at least once before in 85% of cases and at least five times in half of the cases. Statistics Canada reports a 13% increase in homicides between 1986 and 1987 in Canada. In four homicides out of five, victim and suspect knew each other. 40% were members of the same family. Separated and divorced persons were over-represented in the statistics, both as victims and as homicide suspects.[8]

The sentences handed down in the known cases before the courts seem low, given that cases that reach the courts are probably

the most serious ones. More than half of the offenders received either a fine of between $100. and $300. (five) or a probation period (19); only 10 of the 47 offenders were incarcerated, for periods varying from 10 days to three months.

A study by the Solicitor General of Canada estimated, using the best available figures, that of every 1,000 violent incidents, 86 are reported to police, and of those, 49 result in an arrest warrant and .2 in court proceedings. It concluded that approximately 2 cases out of 10,000 are seen by the courts.[9]

4. Police Services: Statistics

Although the number of charges is still very low, the situation has improved. Compared to other provinces, New Brunswick has one of the lowest rates of reports of violent crime. However, New Brunswick has experienced one of the largest increases in its violent crime rate: a 54.6% increase between 1978 and 1987. This increase is due to the number of cases of "family violence" reported to police. More and more New Brunswick women are reporting the assaults against them.

Since the provincial government cannot provide statistics on the number of calls received by police in New Brunswick relating to what they call "domestic disputes", each police force was asked to provide information. The RCMP reported they had received 423 "domestic dispute" calls in 1988. Approximately half of municipal police forces replied to our request; they had answered 550 calls. A rough estimate of the number of calls received by all municipal police forces would be double that figure, 1,100 calls. Therefore, including RCMP figures, a total of 1,523 domestic dispute calls were recorded in New Brunswick in 1988.

The available statistics reveal inconsistency in service. How else to explain that in Moncton, population 54,000, police received 32 calls in 1988, while in Edmundston, population 11,000, police answered 119 calls? Does Edmundston have 20 times the level of violence of Moncton?

A report on a crisis intervention pilot project in the Acadian Peninsula showed that the RCMP laid charges in half of the cases reported to them, while municipal police only laid charges half as often, in one out of four cases.

Of the 423 calls received by the RCMP in New Brunswick, 59 were not classified, 57 were deemed to be unfounded, 157 resulted in charges against men, 8 resulted in charges against women, 142 did not result in any charges. A spokesperson for the RCMP stated that in the latter cases, many may have been dealt with by bonds to keep the peace and be of good behaviour, while in the 157 charges against men and 8 against women, criminal charges, mostly assault charges, were laid.

Similar statistics were not available from municipal police forces since they do not classify assaults between partners separately from assaults between strangers.

4.1 Police Services: Qualitative Considerations

Assaults occur in private, without witnesses other than the victim and, sometimes, children; as a result, if charges are to be laid, the victim must be the one to call police. Studies have shown that an average of 40 incidents of assault have occurred when the victim finally calls the police. It is as a last resort that they call police.

Some police officers dislike answering such calls. The Department of Justice says that domestic dispute situations are the most dangerous calls that police must answer.

According to one police chief, the police officer answering a "domestic dispute" call has only a few minutes to decide whether to lay charges and whether the incident warrants further investigation. He says that decision is not always easy and that a police officer who lays charges without sufficient proof could be later sued for bringing false charges. Since Crown procecutors often refuse to lay criminal charges in such cases, according to the police chief, officers may think their action would serve no purpose; and even if the assaulter is brought to court and is imprisoned, when he is released he will seek revenge. The only real solution according to the police chief, is for the woman to leave her partner, although he says that would mean going on social assistance which means an increase in taxes.

Such a view of the problem leads to a dead end: since he believes nothing can be done legally, assaulted women must tolerate the situation. Moreover, he seems to think women are not able to be financially independent. Wife assault occurs in all socio-economic classes; a survey by the Fredericton Regional Committee on Women Abuse found that 30% of assaulted wives had university degrees, compared to 11% of the general population in the region.[10]

A study by the Solicitor General of Canada recently concluded that the rates of arrest by police are in fact too low and that this is caused by "an entire constellation of values, beliefs and attitudes held by police concerning the acceptability of domestic violence".[11] Is their discretionary power too wide?

Since police officers are the only representative of the justice system who will be on site to establish the facts, their evaluation is crucial. Their intervention will either protect the victim or render her more vulnerable; it will increase or destroy her confidence in the justice system; it will condone or condemn the assaulter's behaviour; it will influence whether charges are laid and if an investigation will be conducted; and it will be used in court if the case proceeds to that stage.

The RCMP have a national response policy on wife assault cases but no uniform policy exists for municipal police forces, which are the responsibility of each municipality. According to interveners, certain police chiefs encourage their officers to lay assault charges whenever they have reason to believe that it occurred, while in some other municipalities, police let the victim decide whether she wants charges to be laid, except in cases where the victim was seriously injured.

Many women who are asked this question interpret it as asking whether they want revenge, while usually their immediate concern is to be left in peace and to be respected. This practice undermines the Crown prosecutors's provincial policy on intervention in such cases, which states that the police and not the victim has the responsibility to lay the charges.

The directives given by each police chief differ according to each chief's attitude. In interviews conducted by the Advisory Council with police officers of various regions in New Brunswick, some had positive attitudes towards assaulted women and attempted to help the Council identify solutions, but others showed openly negative attitudes, so much so that some assaulted women must regret they called the police. In certain municipalities, officers must write a report following each

call, while in others they only write reports when the victim is expected to call on the police again. When the same woman calls the police repeatedly, officers sometimes lose patience and sometimes refuse to respond to the call.

One police chief said to the Advisory Council that the police should not be involved in this type of call, since their intervention will probably only provoke greater violence. Another police chief said these calls were only good for the garbage and he gave as an example an incident where a woman was beaten by her boyfriend because she went home from the club with the wrong man.

Not only are the police chiefs' directives different in each region, but so are the officers' response, depending on their personal attitudes and beliefs. Some said they try to reconcile the couple, others will put the suspect in prison until his trial, and some others blame the victim. One of the officers interviewed said he did not know it was up to the police to lay charges in those cases. According to this officer of the law:

> "Assaulted women like being beaten. Often, they deserve it. I tell them, 'you like it since you stay with him'. And I tell the guy to hit harder. If they go to court, these men have no chance. There is no justice. Feminists and Stalinists have influence on the judges."

According to this New Brunswick police officer, who said that courts discriminate against men, the only way to achieve real justice is to disregard the judicial system and to have recourse to organized crime.

Evidently, the help that the assaulted woman will receive will depend greatly on the officer who responds to the call. A

recent survey of some assaulted women in Fredericton showed that only one in three report that the police played a positive role in responding to her call for help. The quality of the police service will affect the number of women who seek their assistance.

The effectiveness of much police intervention in cases of wife assault is questionable, given the small number of charges laid despite increasing numbers of complaints and given the inappropriate attitudes exhibited by some police officers. What would improve service is training sessions with a feminist approach, that is, placing the responsibility on the male assaulter and not attempting to immediately reconcile the couple or minimize the seriousness of the crime. Training alone is not enough however. Strict directives must accompany the training so that theory flows into practice.

5. Services to Victims

In some municipalities, police officers answering wife assault calls are assisted by interveners who provide support to the victims and help them decide whether to lay charges. The responsibility for the application of the law is transferred from the police to the volunteer. These interveners inform the victims about the legal procedures and the consequences of each option.

Women who have just been assaulted are extremely vulnerable to influence from professionals. The victim who is encouraged to lay charges will more likely do so; the victim who is encouraged to seek therapy or mediation will not often insist on laying charges. When interveners are made aware of the economic and psychological obstacles to a victim's decision to

lay charges and when the victims are given support to answer their needs, the victims are much more likely to cooperate and less likely to ask that charges be withdrawn.[12]

These victim services are agencies of either the police force (such as in Fredericton and Moncton), or the Department of Health and Community Services (such as the pilot project with women in crisis situations in the Acadian Peninsula), or are an independent service (such as the Restigouche Family Crisis Interveners).

The intervention by the victim services representative will be different according to their personal beliefs but also according to the directives given by their employer. Again, inconsistency is prevalent. Some interveners will encourage victims to lay charges while others will do the opposite. One of these interveners, who said she believes that only about half of women have grounds to lay charges, added that when there are children, the woman should not lay charges because of the traumatic effect it might have on them. Another intervener said that the law should be enforced and that assaulters should be dealt with more severely.

6. Courts

Most wife assault cases reported to the police never reach the courts. Even though the Crown prosecutors' policy on such cases states that peace bonds should only be requested when the evidence does not warrant or is insufficient for a charge of assault, the most frequently requested procedure is the peace bond. This is a contract signed by the violent partner promising to keep the peace and to be of good behaviour for a period of up to 12 months; the peace bond does not give him a

criminal record. The section of the Criminal Code dealing with peace bonds seems to not even apply to women who fear being assaulted by their partner, since it uses sexist language which excludes women:

> "Any person who fears that another person will cause personal injury to him or his spouse or child or will damage his property may lay an information before a justice."

The number of peace bonds issued each year to assaultive spouses is not known since the justice system does not classify those separate from other incidents of disturbance of the peace. In Moncton alone, at least two or three peace bonds are issued each week.

We cannot know whether these bonds are effective since no follow-up is done, but interveners state that the assaultive partner does not seem to take the peace bond very seriously. Comments at the national level seem to support this view of peace bonds as ineffective.[13] The assaultive partner promises to keep the peace then returns home without anything having changed the balance of power in the relationship.

A report by the Solicitor General of Canada states that peace bonds are often violated with impunity and that the battered woman who seeks protection from her partner faces many obstacles. By refusing to act, to arrest the assaulter and to state clearly that spousal assault is a crime, the justice system pardons these assaults, according to the author of the report.[14]

In New Brunswick, wife assault cases are heard in Provincial Court not family court; however, if judges of the family court, while dealing with other issues under their jurisdiction,

become aware of a violent situation, they can issue an order restraining the violent spouse from interfering with the separated spouse. The number of such restraining orders issued is not known nor whether they are effective.

In May 1984 in a report on wife assault to the meeting of ministers responsible for the status of women, the New Brunswick Department of Justice expressed its concern about probation orders which forbid the offender from having contact with the victim for a period of time. "These sanctions will not assist in the rebuilding of the family unit, which is presumably one of the ultimate goals of dealing with family violence."[15] In other words, the usefulness of the penal system's intervention in such cases is questioned when it risks dividing the family unit.

This contravenes our idea of an advanced and egalitarian society, a society which wants family and marriage to be havens of peace in the world. As an alternative to the justice system, the Department of Justice proposes diversion programs:

> "In dealing with young offenders, a commonly applied approach is that of diversion. It may be a valid consideration in dealing with wife batterers that a diversion program be established. This may increase the chances of rehabilitation and keep the family unit together."

Many interveners, because they do not recognize the magnitude of the problem, prefer to maintain their discretionary power to divert some cases away from the justice system.[16] The danger exists that diversion become a goal in itself.

6.1 Victim-Witness Services

Several provincial court regions in New Brunswick have recently

established Victim-Witness Services for victims of crimes. These interveners inform victims of the victim compensation program which offers up to $5,000 in compensation for loss of salary, medical costs not covered by health insurance and other inconveniences caused by the crime. The interveners also provide moral support to the victim during the judicial process, explaining procedures and otherwise preparing the victim for the court appearance and helping them to write a victim impact statement. This statement is submitted to the judge before they take a decision on the sentence.

According to one of the interveners, the outcome of the judicial process depends largely on the judge. Judges' discretionary power, although necessary, creates inconsistency in the judgment decisions and illustrates the subjectivity of a system that aims for impartiality.

Victim-Witness Services humanize the justice system. They contribute to greater effectiveness. Many victims become less reluctant to testify when they receive support from these programs.

6.2 Role of the Crown Prosecutors

Crown prosecutors decide, based on the police reports and after consulting the police officer, whether charges are to be laid. Prosecutors present the circumstances of the alleged crime as well as the evidence to the court. They will also recommend to the judge the type of sentence they believe is appropriate based on the impact of the crime. The defence lawyer will plead in favour of the accused and the judge will decide the case based on the facts presented by the lawyers and by the witnesses and the accused.

Prosecutors, unlike police, have a uniform policy for intervention in cases of wife assault. The policy states that spousal assault should be dealt with like any other serious crime. The sentence that is recommended should be what would be recommended if the parties involved were not related. Moreover, prosecutors should recommend mandatory counselling for offenders.

When asked why so few charges are laid in wife assault cases, one Crown prosecutor told us that often the police do not do their work well, and that when their report is incomplete the prosecutor's task is difficult. According to the same prosecutor, violence is most often due to stress and alcohol, and the solution lies in therapy rather than fines and incarceration. When the victim wants the charges withdrawn or refuses to testify, he says that not much can be done, even when an assault actually took place. When the accused is charged with his first offence, he will usually be sentenced to a probationary period or asked to sign a peace bond.

To illustrate the difficulty in applying the law, the prosecutor gave the case of a police officer who saw an assault where a man was strangling a woman. The police charged the man but the victim denied the assault took place and the accused escaped penalty.

According to this prosecutor, the problem is not that prosecutors are overworked. However, one of his colleagues admitted in court that he had not known the details of the incident until the victim gave her testimony in court. Other sources confirm that this occurs frequently: prosecutors take their first look at the police reports minutes before the court hearing.

In a case involving a man charged with assault with a weapon on his wife, the Crown prosecutor asked that the charge be reduced to simple assault because the accused had not actually used the weapon in the assault. Section 267(1) of the Criminal Code states however that the charge of assault with a weapon is appropriate not only when the weapon is used to cause bodily harm but whenever someone carries a weapon when committing an assault. The fact that it was not used does not invalidate the charge. The prosecutor in question also stated that the victim was only kicked and punched a few times. The assaulter, who had a long criminal record, was given a suspended sentence.

6.3 Judges

Judges are sometimes criticized for their reluctance to treat wife assault cases in the same way they treat assaults between strangers, and for the light sentences they give to violent spouses, based on such reasoning as that the man is a good provider, or that he was drunk, or was under stress at work, etc. These factors are not as relevant when dealing with other types of assault. As a report by the Solicitor General of Canada stated:

> "far from being arbitrers, the courts are unable to break out of the traditional belief that the family is a sacrosanct unit vital for healthy society. Conciliation is a court's primary aim and causes of assault are often neutralized in the process; only the most extreme violations are able to surmount this cultural context and become defined as crimes.[17] Criminal court judges initially showed extreme leniency, repeatedly releasing chronic wife beaters on promises of good behaviour, and allowing men accused of serious assaults (e.g., stabbings, breaking ribs and limbs) to plead guilty to misdemeanour charges of "causing a disturbance" with a minor fine.[18] Belief in reconciliation, skepticism of the woman's story, and reluctance to imprison a wage earner often move judges to dispose of woman abuse cases by releasing men on bail or on their own recognizance.[19]"

The report also states that it is even more important to lay charges in cases of wife assault than in other assault cases because wife assault has a high rate of recidivism and the level of violence increases over time.

One judge told the Advisory Council that a year ago, the typical sentence for violent husbands was a fine of $25. to $50. Given the frequency of this crime and the vulnerability of the victim, he thought it important that sentences be higher in order to send the message that this type of crime is serious and that society does not tolerate violence against women. Judges need to be made aware of this, he said and sentences should increase. Anyone convicted of driving while impaired receives a minimum sentence of a $300 fine; minimum sentences should also be adopted in cases of wife assault. Along with a more severe sentence, mandatory therapy should be ordered for the offender. While this judge stated that he saw at least one such case per week, several prosecutors and one other judge report these cases are very rare.

One man who had attempted to murder his wife was sentenced to three months in prison because the judge concluded that only a sick individual would do such a thing. In another case, a man was charged with breaking, entering and uttering death threats against his ex-spouse while armed with a weapon and in front of witnesses. He pled guilty which convinced the judge that he was repentant; the judge said that the offender had acted under the stress "of being separated from such a beautiful woman, like any man dreams of having". The judge added that it was not in society's best interest that the offender be penalized too severely. The couple had unhappy differences, concluded the judge.

In another case, again involving a man with a significant

criminal record, the judge said he believed the plaintiff's testimony concerning the death threats received by telephone from the accused. However, since the accused denied having made the calls and stated he did not have access to a telephone, he decided that the accused might be telling the truth and acquitted him.

In another case, a judge ordered a fine of $25. to a man found guilty of assault since the woman had only been hit once. Upon leaving the court, the offender is reported to have gone to tell his friends at the tavern that they could beat their wife if they only hit once.

Another judge who found a man guilty of assaulting his wife, said the accused was under the influence of alcohol. The judge ordered the man not to drink in a public place.

7. Towards a Solution

The root of the problem of wife assault is men's domination over women. Therefore, the only effective way to eradicate the violence is to create equality between women and men in all areas of human activity. Any policy that promotes equality between the sexes is indirectly contributing to ending violence against women.

Although the justice system is clearly not the only means to combat violence against women, it serves to set the limits of what is morally acceptable behaviour and to decide on punishment for those who transgress this legislated moral code. When it intervenes, its aim is to protect society from these individuals and to discourage repeat offences. The message given to the assaulter and to the general public is

that such behaviour is not acceptable and that whoever commits such acts will be penalized.

This research is not exhaustive. However, it does demonstrate gaps in the application of the law. One initial conclusion is that some women have reason to hesitate before they call on the judicial system because they may very well be victimized again by the system. Immediate action is called for.

This research also points to the need to know more about the way the justice system actually deals with assaults against women and to develop policies to ensure that these cases are dealt with fairly. The Department of Justice has this responsibility.

Complaints about the effectiveness of the judicial system in cases of wife assault have led some to conclude that this type of violence should be decriminalized. The Advisory Council's position is that, before coming to this conclusion, a study of how the system now deals with these cases might be useful in identifying ways it could be improved. A law that is not applied or applied poorly only gives a semblance of protection. It may even serve to condone the crime and show society's lack of concern for victims of wife assault.

Decriminalizing wife assault is not a solution if our aim is to reduce its incidence; rather, the law must be enforced and the justice system's response must be improved. The preventive value of the law is dependent upon the certainty of arrest and appropriate penalty that criminals face. The law on impaired driving has shown to what extent enforcement of a law can be effective in preventing dangerous behaviour. The same could be done for wife assault.

A study in London, Ontario showed that when the municipal police force was instructed to lay criminal charges in all cases of violence in the family, the number of charges laid rose by 2500% and the cases were heard by the provincial instead of the family courts.[18] As many victims as ever called the police for help, despite some people's fears that some would not call, and the victims' level of satisfaction with the service increased. Follow-up studies of some cases where charges had been laid were done; a decrease in the violence and in the number of withdrawn charges were reported. Police officers had reacted mostly negatively to the new policy of laying charges in these cases, but the result for the victims and the aggressors has been positive.

The Ontario government recently issued a similar policy. They promote it as a preventive measure since studies in Canada and United States have shown that a stricter application of the law significantly reduces the incidence of violence. The Ontario government is setting up training programs for police officers, Crown prosecutors and probation officers.

Recent amendments to the Criminal Code will help victims of wife assault. Since 1988, victims of a criminal act may provide the judge with a victim impact statement. The judge may consider the impact of the crime on the victim when deciding on a sentence. However, few women know about this new legislation or about the victim compensation funds which can grant financial compensation to victims of crimes. More women would use the justice system if there was more promotion of these programs, if they knew their rights and if they knew they would get the support they need within the system.

Another recent amendment to the Criminal Code established a surcharge on fines (of up to 15% of the fine, at the discretion

of the judge) on all persons found guilty of a violent crime. The funds would be used by community organizations which provide services to victims.

But much still remains to be done.

Recommendations

1. That the Solicitor General of New Brunswick issue a clear directive to all police forces in the province to lay assault charges in all cases where they have reason to believe that the assault did occur. Peace bonds should only be sought when the evidence does not warrant or is insufficient for assault charges but the plaintiff fears that he will assault her.

2. That all police forces be ordered to provide to government statistics on the number of wife assault calls they receive and on the number and type of charges laid, as well the reasons for decisions not to lay charges, if applicable. Police officers should be under orders to file a complete report on each call received.

3. That the Department of Justice develop information cards that police officers would give to actual or suspected victims and assaulters. The cards should state that wife assault is a crime and should list community resources.

4. That a uniform response policy to calls concerning wife assault be used by all New Brunswick police forces; it should specify that after ensuring the victim's safety, police officers must refer her to a helping agency which would support her while she deals with the justice system. When the officers have reason to believe that the

assaulter may repeat the violence, they should arrest and detain him until the trial. If the assaulter requests help for his problem, the police should refer him to a counselling service for violent men, as well as lay charges.

5. That wife assault be dealt with like other assaults and that sentences imposed on wife assaulters reflect the seriousness of the assault; that the sentences for wife assaulters include, whenever possible, mandatory counselling; that failure to cooperate with this counselling be reported and that the justice system then take appropriate measures.

6. That victim-witness programs be established throughout the province and that they ensure that all women assaulted by their partners write a victim impact study and that judges take these into consideration.

7. That services for victims and offenders be offered equally throughout the province.

8. That all interveners in the justice system receive training sessions to increase awareness of what happens in relationships where there is violence against women, of the characteristics of violent men and assaulted partners and of the economic, psychological and cultural obstacles to the victim's testimony. The aims of these sessions would be to ensure that their interventions are respectful of these realities, that victims are not victimized by the system and that service is consistent and fair.

9. That the provincial government ensure that a coherent approach is adopted by medical and social interveners in

cases of male violence in relationships; that it be based on sexual equality and on a condemnation of male dominance of women.

10. That funding of civil legal aid be increased so that assaulted women who live below the poverty line have access to the courts to settle issues under the Divorce Act, the Marital Property Act and the Family Services Act; that legal aid fees paid to lawyers be increased to reflect more closely those charged to other clients.

11. That the provincial government ensure that counselling services for women and men have as an objective the equalization of power between women and men in relationships and in society.

12. That the Department of Justice carry out extensive research on the issue by compiling statistics on calls received by police and on the number and types of charges laid against assaulters, and by studying how such cases are dealt with in order to be aware of any tendency to minimize the seriousness of the crime.

13. That a media campaign be organized to increase public awareness that violence in relationships is a crime, condemning male domination of women in all social structures including in the family, that the traditional model of a male head of the family be denounced and replaced by a view of spouses as equals with interchangeable roles who settle conflicts by negotiation rather than by force.

14. That the provincial government take an active role in the fight against sexism and sexual discrimination and that

equity programs be adopted to create equality between women and men.

Notes

1. Ontario Medical Review, Wife Assault: A Medical Perspective, p. 1.

2. Canadian Advisory Council on the Status of Women, Battered But Not Beaten, p. 82.

3. Office for the Prevention of Family Violence, Alberta, Breaking the Pattern, p. 18.

4. Health and Welfare Canada, Family Violence: A Review of Theoretical and Clinical Literature, p. 60.

5. Idem no. 2, p. 16.

6. Statistics Canada, "Male Violence in the Home" in Canadian Social Trends, Autumn 1989, p. 21.

7. Solicitor General of Canada, "Multiple Victimization" in Bulletin, No. 10, p. 5.

8. Statistics Canada, Le Quotidien, Oct. 88, p. 4-5.

9. Solicitor General of Canada, The Criminal Justice System Response to Wife Assault, p. 63.

10. Fredericton Regional Committee on Women Abuse, Preliminary Report, July 1989, p. 3.

11. Idem no. 9, p. 31.

12. Williamson, S., The Criminal Justice Response on Wife Assault, p. 154.

13. Idem no. 9, p. 44.

14. Idem no. 9, p. 37.

15. Minister responsible for the status of women, Federal/ Provincial/Territorial Report on Wife Battering, p. 162.

16. Idem no. 9, p. 29.

17. Idem no. 9, p. 55.

18. Idem no. 9, p. 58.

19. Idem no. 9, p. 58.

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